



Every month I summarize the most important probate cases in Michigan. Now I publish my summaries as a service to colleagues and friends. I hope you find these summaries useful and I am always interested in hearing thoughts and opinions on these cases.

PROBATE LAW CASE SUMMARY

BY: Alan A. May Alan May is a shareholder who is sought after for his experience in guardianships, conservatorships, trusts, wills, forensic probate issues and probate. He has written, published and lectured extensively on these topics.



He was selected for inclusion in the 2007-2017 issues of *Michigan Super Lawyers* magazine featuring the top 5% of attorneys in Michigan and has been called by courts as an expert witness on issues of fees and by both plaintiffs and defendants as an expert witness in the area of probate and trust law. Mr. May maintains an “AV” peer review rating with Martindale-Hubbell Law Directory, the highest peer review rating for attorneys and he is listed in the area of Probate Law among Martindale-Hubbell’s Preeminent Lawyers. He has also been selected by his peers for inclusion in *The Best Lawyers in America*® 2019 in the fields of Trusts and Estates as well as Litigation – Trusts & Estates (Copyright 2018 by Woodward/White, Inc., of SC). He has been included in the Best Lawyers listing since 2011. Additionally, Mr. May was selected by a vote of his peers to be included in *DBusiness* magazine’s list of 2017 Top Lawyers in the practice area of Trusts and Estates. Kemp Klein is a member of LEGUS a global network of prominent law firms.

He is a member of the Society of American Baseball Research (SABR).

For those interested in viewing previous Probate Law Case Summaries, go online to: <http://kkue.com/resources/probate-law-case-summaries/>.

He is the published author of “Article XII: A Political Thriller” and “Sons of Adam,” an International Terror Mystery.

DT: May 7, 2019

RE: *In re Haas Estate*

STATE OF MICHIGAN COURT OF APPEALS

“Alan, you cannot write about baseball all your life”

- Mrs. Pollinger
- 12th Grade English Comp
- Mumford High - 1959

BASEBALL STATS

Who is this Bellinger character? Until yesterday, he was leading both leagues in homeruns. He is now second to Christian Yelich, trailing by one.

Cody Bellinger is a 23-year old Dodger First Baseman and leads the National League in the following categories:

1	Wins above replacement player	3.8
2	War position player	3.8
3	Offensive war	2.7
4	Batting average	.403
5	On base percentage	.474
6	Slugging percentage	.806
7	On base plus slugging	1.280
8	Runs	34
9	Hits	32
10	Total bases	104
11	RBI	38
12	Adjusted OPS+	236
13	Runs created	50
14	Adjusted batting runs	26
15	Adjusted batting wins	2.4
16	Times on base	72
17	Offensive win percentage	.398
18	Base out runs added	28.93
19	Wins probability added	2.5
20	Situation wins added	2.8
21	Base out wins added	2.7

In three years, he has produced 78 dingers.

If you looked at his last two season's statistics, one would not have assumed such dominance; he batted .267 in 17' and dropped to .260 in 18'. Must have eaten a lot of Wheaties!

**Caveat: MCR 2.119, MCR 7.212 and
7.215 take effect May 1, 2016 on
propriety of citing unpublished cases**

REVIEW OF CASE:

RE: *In re Haas Estate*

- Removal of Personal Representative
- Excessive Fees are Equal to Mismanagement
- Failure to Oversee Fees is an Element of Mismanagement

Although the lower Court decided the case on the facts when removing the Personal Representative, I believe the case is worthy of review.

There was a simple Will. There were small personal property assets consisting of bank accounts and investment accounts. There was one piece of real estate. Appellee was left the real estate. Appellant was left the accounts. Without saying so, the Court of Appeals assumes one knows that personalty is to be exhausted before a specific devise of real estate is used for claims or administrative expenses. As administrative expenses were climbing, Appellant asked Appellee to contribute under pain of losing the house by sale to pay administrative expenses. The lower Court found that the legal fees were high given the lack of necessity of legal skill in matriculating the estate. There was no rendition as to whether the fees were allowed and what the source of payment would be. My assumption is that the lawyer got everything, the Appellant nothing and the Appellee got her house. She successfully removed the Appellant on the basis of mismanagement. That mismanagement being incurring high legal expenses which the Court believed were unnecessary given the simplicity of the estate and failure to question their propriety.

The case is also interesting because it's usually the lawyer that supervises the client and here the client is being removed for not supervising the lawyer.

STATE OF MICHIGAN
COURT OF APPEALS

In re ESTATE OF JACKIE LEE HAAS.

JANISE L. CURTIS,

Appellant,

v

NANCY L. HAAS,

Appellee.

UNPUBLISHED

April 23, 2019

No. 343711

Shiawassee Probate Court

LC No. 17-037604-DE

Before: BORRELLO, P.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

In this dispute between siblings Janise Curtis and Nancy Haas over the administration of the estate of their father, Curtis appeals as of right the probate court's order removing her as personal representative of the estate and appointing a successor personal representative. For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

Jackie Lee Haas, the decedent, died on March 13, 2017. In his will, dated October 12, 2016, the decedent nominated his daughter Janise Curtis as personal representative of his estate, and he devised a bank account and investment account to her. According to Curtis, this investment account consisted of three stocks. The decedent also devised his home to his daughter Nancy.¹ Nancy had been living with the decedent in his home at the decedent's request. Nancy had been living in the home for several years. The remainder of the decedent's estate was devised to Curtis and Nancy in equal shares.

¹ Because Nancy and the decedent share the same last name, we will use Nancy's first name throughout this opinion to avoid confusion.

On May 8, 2017, Curtis filed an application seeking informal probate of the will and to have herself appointed personal representative pursuant to the terms of the will. The decedent's will was admitted to informal probate, and Curtis was appointed personal representative.

During the course of administering the estate, Curtis retained counsel and incurred substantial bills for legal services. There were also other expenses and creditors of the estate. The estate had limited liquid assets, and the estate's most valuable asset was the house. Curtis intended to sell the house if necessary in order to pay the estate's financial obligations. However, Curtis's attorney sent Nancy a letter indicating that Nancy would be able to keep the house if Nancy personally paid over \$20,000, which represented various financial obligations of the estate.

Nancy subsequently petitioned to have Curtis removed as the personal representative, claiming that Curtis should be removed because (1) "removal is in the best interests of the estate," (2) "the person who sought appointment of the current personal representative intentionally misrepresented material facts," and (3) the personal representative "mismanaged the estate."

Following an evidentiary hearing, the probate court removed Curtis as personal representative and appointed a new personal representative. This appeal ensued.

II. STANDARD OF REVIEW

"The proper application of a statute presents a question of law that we consider *de novo*." *In re Kramek Estate*, 268 Mich App 565, 569; 710 NW2d 753 (2005). Review of a probate court's decision whether to remove a personal representative is for an abuse of discretion. *Id.* at 576. "The trial court abuses its discretion when it chooses an outcome outside the range of reasonable and principled outcomes." *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008).

III. ANALYSIS

Curtis argues on appeal that the probate court abused its discretion by removing her as personal representative.

Section 3611 of the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, provides the applicable standards for removing a personal representative for cause. *In re Kramek Estate*, 268 Mich App at 575. MCL 700.3611 provides in pertinent part as follows:

- (1) An interested person may petition for removal of a personal representative for cause at any time . . .
- (2) The court may remove a personal representative under any of the following circumstances:
 - (a) Removal is in the best interests of the estate.

(b) It is shown that the personal representative or the person who sought the personal representative's appointment intentionally misrepresented material facts in a proceeding leading to the appointment.

(c) The personal representative did any of the following:

(i) Disregarded a court order.

(ii) Became incapable of discharging the duties of office.

(iii) Mismanaged the estate.

(iv) Failed to perform a duty pertaining to the office.

In this case, the probate court determined that Curtis had managed the estate in a manner that promoted her own interests as a beneficiary over the interests of the estate. The probate court found that such management demonstrated mismanagement of the estate and that removal of Curtis was therefore in the best interests of the estate.

Review of the record evidence submitted in this matter leads us to conclude that there was evidence to support the probate court's conclusion that Curtis had attempted to get Nancy to agree to distributing the estate in a manner other than the method prescribed by the decedent in his will. After Nancy refused, Curtis retained legal counsel and incurred significant expenses for the estate in the form of bills for legal services and personal representative fees, even though the estate involved a simple will and relatively few, easily identifiable assets, creditors, and heirs. As her retained counsel continued to pursue Curtis's legal issues, Curtis did not question the amount of legal expenses that the estate was incurring. As found by the probate court, such management of the estate led to the estate incurring high expenses that were disproportionate to the estate's limited assets. The evidence further suggested that Curtis's manner of administering the estate, which was not cost-efficient, would significantly impact Nancy's distribution under circumstances where the will had provided for Curtis to receive a distribution that was substantially lower than Nancy's. A personal representative "is a fiduciary" who is "under a duty to settle and distribute the decedent's estate in accordance with the terms of a probated and effective will and [EPIC], and as expeditiously and efficiently as is consistent with the best interests of the estate." MCL 700.3703(1). The evidence does not reflect an attempt by Curtis to settle and distribute the estate expeditiously and efficiently. Under these circumstances, it appears that Curtis was mismanaging the estate and that removing her as personal representative was in the estate's best interests. MCL 700.3611(2)(a) and (c)(iii). Accordingly, we conclude that the probate court's decision to remove Curtis as personal representative thus was not an abuse of discretion.

Affirmed. No costs are awarded. MCR 7.219(A).

/s/ Stephen L. Borrello

/s/ Douglas B. Shapiro

/s/ Michael J. Riordan